



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1996

Mr. Gerald E. Anderson, Ed.D.
Superintendent
Brazosport Public Schools
P.O. Drawer Z
Freeport, Texas 77541

OR96-2120

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 102251.

The Brazosport Public Schools (the "district") received two requests for information. You say the district does not possess portions of the requested information. You say the district has released to the requestor the date of the investigation results and a copy of the letter written by Mr. Wiseman. However, you assert that some of the requested information is excepted from required public disclosure based on Government Code sections 552.101 and 552.102. You also maintain that the act does not require the district to compile the requested list of teachers interviewed during a recent investigation of a certain incident.

Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). As the public has a legitimate interest in the job performance of public employees, section 552.102 cannot serve to except from disclosure any part of the requested information.

The requested information includes "annual appraisals and evaluations for the last ten (10) years." Section 552.101 also applies to information that is made confidential by other statutes. Section 21.355 of the Education Code makes confidential any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). As the district did not submit any documents that appear to be responsive to this part of the request, we cannot rule on the public disclosure of this information.

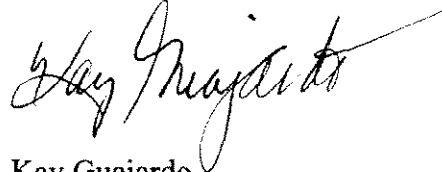
You also ask about a teacher's social security number. Government Code section 552.117 excepts from required public disclosure the home address, home telephone number, social security number and information about family members of a current or former official or employee of a governmental body, provided the official or employee has complied with Government Code section 552.024. Section 552.024 contains procedures whereby an official or employee may opt to prohibit disclosure of the information covered by section 552.117. Thus, if at the time the district received the request, the teacher had complied with Government Code section 552.024, the district must withhold from the requestor the teacher's social security number. *See* Open Records Decision No. 530 (1989).

If the teacher has not complied with section 552.024, the district must consider whether the social security number may be confidential under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

Turning to the list of interviewed teachers, we agree that the act does not require a governmental body to create information or to compile information in response to a request for information. However, the district has compiled such a list and submitted it to this office for review. We believe that the list as well as the September 3, 1996, memorandum from Dr. Elizabeth Allen to Mr. William Few are education records subject to the Federal Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g. Government Code section 552.026 incorporates FERPA into the act. FERPA grants parents a right of access to the education records of their children. *See id.* § 1232g(a)(1)(A). Accordingly, the district must release the submitted list and memorandum to the requestor in accordance with FERPA. *See id.*

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long, sweeping horizontal line extending from the end of the signature.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 102251

Enclosures: Submitted documents